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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/408).

The Counter-Terrorism Committee has received the attached supplementary report from Malta, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 11 July 2002 from the Permanent Representative of Malta to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On behalf of my Government, I have the honour to submit herewith the relevant information requested by the Counter-Terrorism Committee in its communication dated 1 April 2002, regarding measures taken by the Government of Malta in implementing the provisons of Security Council resolution 1373 (2001) of 28 September 2001 (see enclosure).

The Government of Malta expresses its readiness to furnish the Committee with any further information and/or clarification it may require.

It would be appreciated if the present letter and attached report are circulated as a Security Council document.

(*Signed*) Walter **Balzan**
Ambassador
Permanent Representative

Enclosure

Malta

Second report to the Security Council Counter-Terrorism Committee established pursuant to paragraph 6 of Security Council resolution 1373 (2001)*

* The annexes are on file with the Secretariat and are available for consultation.

Sub-paragraph 1 (a):

Are natural or legal persons other than banks (e.g. attorneys, notaries or other intermediaries) required to report suspicious transactions to the public authorities, and if so, what penalties apply to a person who omits to report either wilfully or by negligence?

The Prevention of Money Laundering Regulations, 1994[1] are not only applicable to banks but also to the following categories of *relevant financial business*[2]:

- Non-bank financial institutions that are authorised under the Financial Institutions Act 1994 including bureaux de change and money transmission services;
- Life assurance business carried out in terms of the Insurance Business Act, Cap 403 or the Insurance Brokers and Other Intermediaries Act, Cap 404;
- Investment business carried on in terms of the Investment Services Act, 1994;
- A collective investment scheme licensed under the Investment Services Act, 1994;
- Any activity carried out by a stockbroker licensed under the Malta Stock Exchange Act, Cap 345.

The Gamings Act Regulation 1998 has also extended the 1994 Regulations to Casinos. Regulation 49 thereto requires the casino licensee and any employee to report to the relevant authorities any information or other matter which gives or may give rise to any knowledge or suspicion that a person in the casino is engaged in money laundering.

The Prevention of Money Laundering Regulations, 1994 aim to provide rules and obligations for subject persons carrying out relevant financial business to prevent them from being used for money laundering purposes. The know-your-client rule is the golden rule of the Regulations which is to be strictly followed.

Section 3 of the Regulations requires subject persons to establish and maintain specific systems and procedures to guard against their business and the financial system from being abused for the purposes of money laundering. In essence these procedures are designed to achieve two objectives:

a. to ensure that, through appropriate identification procedures, apart from the underlying 'know-your-client' concept, if a customer comes under investigation in the future, the institution can provide its part of the audit trail;
b. to enable suspicious customers and transactions to be recognised as such and reported to the authorities. The Regulations in fact make provision for:-

    i. identification procedures [Section 8];
    ii. record-keeping procedures [Section 9];
    iii. recognition and reporting of suspicious transactions [Section 10];
    iv. education and training of all employees; and
    v. internal controls and communication of policies [Section 11].

Failure to comply with any of the requirements and obligations under Section 3 of the Regulations, constitutes an offence punishable by a fine (*multa*) not exceeding Lm20,000 (twenty thousand Maltese liri)[3] or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment [Section 3 (2)].

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[1] Annex I

[2] As defined in Section 2 of the Prevention of Money Laundering Regulations, 1994.

[3] As at 3rd July 2002, the exchange rate between the Maltese Lira and the US Dollar is 2.3662.

The Regulations identify four cases where the obligations of subject persons come in force, viz.:

a. where negotiations take place between the parties with a view to the formation of a business relationship between them;
b. handling of a suspicious transaction;
c. handling of a single large transaction (minimum payment of Lm5,000); and
d. handling of a series of smaller transactions, but the total amount of which adds up to Lm5,000 or more.

Section 11 of the 1994 Regulations places a reporting obligation on *supervisory authorities*[4] as follows should they encounter any suspicion of money laundering activities in the course of their duties:

- The Central Bank of Malta (CBM);
- The Malta Financial Services Centre (MFSC);
- The Competent Authority appointed to regulate and supervise relevant financial business as detailed above;
- The Registrar of Companies;
- Banking, investment services and insurance business supervisors;
- An auditor appointed by a person carrying on relevant financial business;
- The Malta Stock Exchange (MSE);
- The Gaming Board appointed under the Gaming Act Regulations
- An inspector appointed under the Gaming Act.

As regards attorneys, notaries and other professions, should any of these be undertaking *relevant financial business* as defined in Section 2 (1) of the Prevention of Money Laundering Regulations, 1994, under a licence in terms of the respective legislation, than the reporting obligation applies.

According to Section 7 (5) of the above Regulations should an advocate, notary, certified public accountant, certified public accountant and auditor or nominee company established and practising in Malta undertake a financial transaction on behalf of their clients by reason of their own profession (referred to as 'an applicant for business') then the Prevention of Money Laundering Regulations, 1994 stipulate that they have to make certain declarations to the bank or other financial institution with which they are applying for business, namely:

- that the applicant for business is acting in the professional capacity of advocate, notary, certified public accountant, certified public accountant and auditor or nominee company on behalf of an undisclosed principal and has maintained a professional relationship with the principal for the three months immediately preceding the application for business or has obtained satisfactory references from at least 2 persons who have maintained a professional relationship with the principal for the said three months;

- that the powers of the applicant for business have not been conferred principally for the sole purpose of dealing with persons undertaking relevant financial business, and that the applicant knows or will know the nature of the underlying transactions for the purpose of which he will be dealing with persons undertaking relevant financial business;

- that the applicant for business has obtained satisfactory evidence of the identity of the principal and maintains a record of such identity or identities in accordance with regulation 9 of the said Regulations;

- that the applicant for business is not aware of any fact that indicates that, or causes him to suspect that, the assets or transactions involved are or will be derived from criminal activity;

- that the applicant for business will inform the person with whom he is applying for business if the powers of the applicant for business are revoked or otherwise terminated, or if any statement in the written declaration should cease to be true.

[4] As defined in Section 2 of the Prevention of Money Laundering Regulations, 1994.

An applicant for business who makes a false declaration in connection with the above shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding Lm20,000 (twenty thousand Maltese lira) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment [Section 7 (6)].

Directive 2001/97/EC

As regards the obligations of attorneys, notaries or other intermediaries, it is important to note that the provisions of the Money Laundering Regulations 1994 are to be revised shortly to be brought in line with EU Directive 2001/97[5] amending the 91/308/EEC Directive[6]. Directive 2001/97 extends the obligations stemming from the 1993 Directive to legal or natural persons acting in the exercise of their professional activities, including auditors, external accountants, tax advisors, notaries and independent legal professionals. A brief analysis of the 2001 Directive is pertinent to demonstrate the position which will obtain in Malta shortly in connection with this subject-matter, namely how persons other than banks are regulated.

As stated in Paragraph 15 of the 2001 Directive:

The obligations of the Directive concerning customer identification, record keeping and the reporting of suspicious transactions should be extended to a limited number of activities and professions which have been shown to be vulnerable to money laundering.

According to the 2001 Directive, Member States must ensure that the obligations laid down in Directive 91/308/EEC[7] are imposed, *inter alia*, on the following legal or natural persons acting in the exercise of their professional activities, namely:

1. auditors, external accountants and tax advisors;
2. real estate agents;
3. notaries and other independent legal professionals, when they participate, whether:
   (a) by assisting in the planning or execution of transactions for their client concerning the
      (i) buying and selling of real property or business entities;
      (ii) managing of client money, securities or other assets;
      (iii) opening or management of bank, savings or securities accounts;
      (iv) organisation of contributions necessary for the creation, operation or management of companies;
      (v) creation, operation or management of trusts, companies or similar structures; or
   (b) by acting on behalf of and for their client in any financial or real estate transaction;
4. dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR15 000 or more;
5. casinos.

According to Maltese Legislation and practice, what acts constitute reasonable grounds for suspicion and how are they dealt with?

Section 2 (1) (b) 'Case 2' of the Prevention of Money Laundering Regulations, 1994 defines a case of suspicion for the purposes of the Regulations as follows:

> *'(suspicions) means any case where, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering'.*

[5] Annex II
[6] Annex III
[7] Articles 3 to 12 of Directive 91/308/EEC

According to Section 11 of the above Regulations where a supervisory authority or any person undertaking relevant financial business within the meaning of the Regulations obtains any information, and is of the opinion that the information indicates that any person has or may have been engaged in money laundering, that supervisory authority or person shall, as soon as is reasonably practicable, disclose that information to a Police officer not below the rank of Inspector. (The Malta Police is the Enforcement Authority under the Prevention of Money Laundering Regulations, 1994). Any bona fide communication or disclosure made in accordance with Section 11 is not to be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information.

Furthermore, Section 34 (3) of the Banking Act 1994 and Section 25 (3) of the Financial Institutions Act 1994 provide that credit and financial institutions may be required to comply with any guidelines that may be issued by the Competent Authority in carrying out the obligations under the Prevention of Money Laundering Regulations, 1994. As from 1st January 2002, the Malta Financial Services Centre has been appointed as the Competent Authority for the licensing and supervision of credit and financial institutions. A series of Guidance Notes have been issued providing guidelines to the different sectors involved as regards compliance with the obligations of the Prevention of Money Laundering Regulations, 1994, namely:

a. Guidance Notes for Credit and Financial Institutions,;
b. Guidance Notes for Investment Services and Life Assurance Business;
c. Guidance Notes for Offshore Banking Licence Holders;

These Guidance Notes are currently being amalgamated into one set. These Guidance Notes issued by the Malta Financial Services Centre provide indicators of what could constitute possible suspicious transactions. These are to be found in Appendix II to the Guidance Notes to Credit and Financial Institutions[8]; Appendix II to the Guidance Notes for Investment Services and Life Assurance Business[9] and Appendix II to the Guidance Notes for Offshore Banking Licence Holders[10]. The said examples include, *inter alia*, illustrations of money laundering using cash transactions; money laundering using bank accounts; money laundering using securities and investment related transactions and money laundering using offshore international activity. These Appendices are not meant to be exhaustive but only indicative.

The Prevention of Money Laundering Regulations, 1994 impose a statutory obligation on all staff of credit and financial institutions to report suspicions of possible money laundering activities. It is not the responsibility of credit or financial institutions' staff to determine whether the suspected funds originate through any of the underlying criminal activities listed in the Second Schedule to the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta)[11]. Section 10 of the Regulations contains the provision for a *subject person*[12] and a supervisory authority to maintain internal reporting procedures. The provisions require all credit and financial institutions and supervisory authorities to appoint a Money Laundering Reporting Officer who should be responsible for the implementation and maintenance of such reporting procedures.

Section 10 imposes a significant degree of responsibility on the Money Laundering Reporting Officer. He is required to determine whether the information or other matters contained in an internal suspicious transaction report he has received do give rise to a knowledge or suspicion that a customer is engaged in money laundering. He is not expected to investigate the transaction other than internally or to determine whether the funds are the proceeds of criminal activity. Since Section 10 imposes the obligation of reporting on the 'subject person' i.e. the institution itself, credit and financial institutions are expected to ensure that the appropriate reporting procedures are instituted and complied with. Section 11 requires credit and financial institutions and supervisory authorities to disclose to the Enforcement Authority any information which indicates that a person is or may have been engaged in money laundering. To this effect, the Enforcement Authority has

[8] Annex IV
[9] Annex V
[10] Annex VI
[11] Annex VII
[12] As referred to in Section 10 of the Prevention of Money Laundering Regulations, 1994.

established procedures to be followed by institutions in filing Suspicious Transactions Reports, including particular officers to be contacted.

The Enforcement Authority, in acknowledging in writing the receipt of a Suspicious Transaction Report, is expected to give whatever appropriate written instructions deemed necessary to the credit or financial institution concerned as to whether or not to continue a transaction or to operate the suspected customer's account or other instructions as might be felt necessary.
Close liaison with the Enforcement Authority in such situations is important not to frustrate efforts of any possible investigation. Once a disclosure report has been made, any further material information available to the disclosing institution is to be spontaneously disclosed to the investigating officers.

Subparagraph 1 (b):

Could Malta please outline the relevant legal provisions and specify the penalties attached to the acts listed in this sub-paragraph.

Following are the legal provisions establishing as criminal offences acts related to those mentioned in sub-paragraph 1 (b), together with an indication of the relative penalty:

i. *promoting, constituting, organising or financing an organisation of two or more persons with a view to committing criminal offences*[13] – from 3 to 7 years increased to 4 to 20 years where the number of persons is ten or more;

ii. *belonging to an organisation as aforesaid*[14]– from 1 to 5 years increased to 18 months to 9 years where the number of person in the organisation is ten or more.

In the case of bodies corporate the punishment for the above offences varies from a minimum of 10, 000 Maltese lira to 500, 000 Maltese lira.

The financing of terrorist acts is criminalised as is the financing of terrorist organisations under the provisions of existing legislation. The financing of terrorist acts would amount to complicity in the terrorist act or to conspiracy to commit the terrorist act. The financing of a terrorist organisation would amount to the offence of promoting, constituting, organising or financing an organisation with a view to commit criminal offences. For complicity the same punishment is due as for the perpetrator of the offence, while for conspiracy the same punishment is due as for the completed offence with a decrease of two or three degrees.

Subparagraph 1 (c):

Please describe the procedure for freezing funds, financial assets etc of persons or entities suspected of terrorist activities as distinct from freezing funds, financial assets etc of persons suspected of engaging in money laundering activities.

The procedure for the freezing of funds, financial assets etc of persons or entities suspected of terrorist activities is identical to that applicable in the case of persons suspected of engaging in money laundering activities. As a result of new provisions and amendments added to the Maltese Criminal Code (Chapter 9 of the Laws of Malta) by virtue of Act III of 2002, the same procedures for the freezing of funds, financial assets etc as are established under the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) are now applicable in two other cases, namely:

[13] Section 83A – Criminal Code (Chapter 9 of the Laws of Malta)
[14] Ibid.

i. where there is reasonable cause to suspect that a person is guilty of a crime liable to the punishment of imprisonment of more than one year, and

ii. where a person is charged with any such crime.

According to Section 23A of the Maltese Criminal Code, where a person is charged with a crime liable to the punishment of imprisonment for a term of more than one year, the provisions of Section 5 of the Prevention of Money Laundering Act apply. The said Section 5 stipulates, *inter alia*, that where a person is so charged, the court shall at the request of the prosecution make an order:

(a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and

(b) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property.

Any such order will remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

Section 435A of the Maltese Criminal Code further provides that where there is reasonable cause to suspect that a person is guilty of a crime liable to the punishment of imprisonment of more than one year, the provisions of Sections 4 and 5 of the Prevention of Money Laundering Act will apply. By virtue of Section 4, if the Attorney General has reasonable cause to suspect that a person is guilty of such a crime, he may apply to the Criminal Court for an investigation order and/or an attachment order. An attachment order so issued, has the effect of:

(a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;

(b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and

(c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

An attachment order will, unless it is revoked earlier by the Attorney General, cease to be operative on the expiration of thirty days from the date on which it is made. If the Court is satisfied that substantially new information with regards to the offence is available, another attachment order may be issued.

Subparagraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes, for example, to terrorist activities?

The decision to establish and promote Malta as a prudent and efficient international financial centre, prompted the undertaking to develop a comprehensive set of laws for the financial services sector in order to protect the financial and operational integrity of the domestic and international markets.

There exist established procedures within Malta's financial institutions which seek to monitor financial transactions with the aim of avoiding their being used for illegal purposes. These procedures include the mechanisms utilised for reporting suspicious transactions which may help detect the use of the banking services in support of terrorist activities.

In this context, the 'know-your-client' concept is recognised as a basic and strong component of the financial tracking system. The first key to recognition is knowing enough about the customer and his business to recognise that a transaction,

or series of transactions, is unusual. A suspicious transaction will often be one which is inconsistent with that customer's known legitimate business or personal activities or with the normal business for that type of account.

All the financial operators are aware of the responsibilities in monitoring financial transactions under the Money Laundering regulations and to maintain proper ongoing know-your-client procedures.

This notion of 'know your client' is enshrined in the Prevention of Money Laundering Regulations, 1994[15]. Section 3 of these Regulations was purposely drafted to incorporate the principle of 'know your client'. It provides that no person shall in the course of carrying *relevant financial business*, form a business relationship or carry out a one-off transaction with another unless that person follows the identification procedures; the record-keeping procedures and the internal reporting procedures as laid down in the same Regulations[16].

In other words, these Regulations enable the persons entering financial business to provide part of the audit trail and also enable suspicious customers and transactions to be recognised and reported.

The identification procedures are laid down in Sections 5, 6 and 7 of the Regulations. As soon as it is reasonably practicable after contact is first made between a person and an applicant for business concerning any particular business relationship or one-off transaction, the following information is to be sought:

1. the production by the applicant for business of satisfactory evidence of his identity; or
2. the taking of such measures as will produce such evidence of identity. Where that evidence is not obtained, the procedures require that the business in question shall not proceed or shall proceed only in accordance with any direction made by a Police officer not below the rank of Inspector. This is qualified by a subsequent proviso which provides that in cases where refraining from proceeding is impossible or likely to frustrate efforts of investigating a suspected money laundering operation, then that business is to proceed on condition that a report is immediately lodged with a Police officer, again not below the rank of Inspector.

For the purposes of the 1994 Regulations, evidence of identity is deemed satisfactory if it is reasonably capable of establishing that the applicant is the person who he claims to be and the person who obtains the evidence is satisfied, in accordance with the established internal procedures and policies of the business concerned, that it does establish that fact.

Further to the above legislative machinery requiring identification procedures, the *Guidance Notes for Credit and Financial Institutions*, the *Guidance Notes for Investment Services and Life Assurance Business* and the *Guidance Notes for Offshore Banking Licence Holders* lay down detailed guidelines as to how to identify a customer. These Guidance Notes include the specific procedures to verify identity in particular circumstances, for instance the identification procedure in the case of a face to face customer and the non-face to face verification. Provision is, *inter alia*, made for situations where the identification of corporate, incorporate and other legal entities needs to be established. The myriad of cases catered for in these Notes ensure that comprehensive guidelines are provided in the context of a financial tracking.

Record-keeping is a matter regulated by Section 9 of the Money Laundering Regulations. The records which are to be kept are those relative to the verification of the identity of a person and those containing details concerning all transactions carried out by that person in the course of an established business relationship. The Regulations lay down a stipulated timeframe within which the said records must be kept. The commencement of this time frame varies according to the nature of the records as provided in Section 9(2).

Sections 10 of the Money Laundering Regulations cater for the internal reporting procedures. Section 10 sets up a structure within which the workings of a reporting procedure are to take place. A person, called 'Subject Person' under

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[15] *Vide* Annex I.

[16] Identification procedures: Sections 5 to 8
Record-keeping procedures: Section 9
Internal Reporting Procedures: Sections 10 and 11

Section 10, is to maintain internal reporting procedures. To fulfil the obligations arising from the Money Laundering Regulations, the subject person is to employ a reporting officer. Reports of any information or any other subject matter which gives rise to a knowledge or suspicion that another person is engaged in money laundering are to be made to the reporting officer.

The latter officer is to examine the reports in order to determine whether the information contained therein gives rise to a knowledge or suspicion that another person is engaged in money laundering. A supervisory authority is to maintain internal reporting procedures in accordance with the layout provided in the very same Section 10. The failure of a supervisory authority to do so would set in motion disciplinary proceedings against the officials or employees concerned.

Subparagraph 2 (a):

Is there any provision in Maltese law to prohibit the acquisition of firearms without a license (especially at the time of purchase)?

According to Section 5 of the Arms Ordinance (Chapter 66 of the Laws of Malta), no dealer in arms proper or any other person who sells, transfers or delivers any firearm or ammunition may do so except to a person holding a licence from the Commissioner of Police to purchase or receive such firearm or ammunition.

Any dealer in arms proper or any other person who sells, transfers or delivers any firearm or ammunition in contravention of the requirements of Section 5 is liable, on conviction, to a fine *(multa)* of not less than one hundred liri or to imprisonment for a term not exceeding three months.

On delivery of any firearm or ammunition to a person in possession of the said licence to purchase or receive such firearm or ammunition, a dealer or other person shall retain such licence and transmit the same to the Commissioner of Police not later than the day next following the day of delivery (Section 6 of the Arms Ordinance).

A licence from the Commissioner of Police is also required to keep or carry any firearm or ammunition (Sections 3 of the Arms Ordinance). Any person acting in contravention of this provision will, on conviction, be liable to imprisonment for a term from three months to three years.

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Malta, including, in particular:

- ***the carrying out, within or from Malta, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and***
- ***deceptive activities such as recruitment based on a representation to the recruit that the purpose of recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.***

All public collections i.e. all appeals to the public for money or property by any person or organisation require a licence from the Commissioner of Police. Persons pursuing a charitable purpose may be exempted from the requirement of a licence Such exemption may be revoked or varied at any time.

Please outline the new law which Malta intends to enact in order to criminalise the recruitment of members of terrorist groups, and provide a progress report on its enactment and implementation.

By Act III of 2002 the new offences of *promoting, constituting, organising or financing an organisation of two or more persons with a view to committing criminal offences* and of *belonging to an organisation as aforesaid* were

introduced. The recruitment of members of terrorist groups and the collection of funds for such groups now constitute one of the said offences.

Subparagraph 2 (c):

Please clarify the legal basis on which a person known to be involved in acts of terrorism would be refused entry into Malta.

The Principal Immigration Officer appointed in accordance with Section 3 (1) of the Immigration Act (Chapter 217 of the Laws of Malta) may not grant leave to land in Malta to any foreigner who is considered as a prohibited Immigrant. Details of any person (foreigner) who is known to be involved in acts of terrorism is entered in a 'stop list' at all points of entry and that person will be refused entry if he travels to Malta. Such persons are also entered on a visa database and if any person included in this list applies for a visa, his visa application will be turned down.

Subparagraph 2 (e):

Are all the relevant provisions of the Penal Code of Malta applicable in all of the following circumstances:

- ***acts committed outside Malta by a person who is a citizen of, or habitually resident in, Malta (whether that person is currently present in Malta or not);***
- ***acts committed outside Malta by a foreign national who is currently in Malta?***

Not all the provisions of the Criminal Code apply to acts committed outside Malta by a citizen of or habitual resident in Malta or to acts committed outside Malta by a foreign national who is currently in Malta. The Maltese Courts, however, have jurisdiction over all terrorism-related offences as outlined under the reply to sub-paragraph 1(b) above, as well as those listed below, when these are committed outside Malta by a citizen of Malta or by a permanent resident in Malta as well as over the same offences when committed outside Malta by a foreigner currently in Malta.

What are the sentences provided by the Penal Code for offences of the kinds mentioned in this sub-paragraph?

i. *promoting, constituting, organising or financing an organisation of two or more persons with a view to committing criminal offences*[17]– from 3 to 7 years increased to 4 to 20 years where the number of persons is ten or more;

ii. *belonging to an organisation as aforesaid*[18]– from 1 to 5 years increased to 18 months to 9 years where the number of person in the organisation is ten or more;

In the case of bodies corporate the punishment for the above offences varies from a minimum of 10, 000 Maltese liri to 500, 000 Maltese liri.

iii. *illegal arrest, detention or confinement*[19]: from 7 months to 2 years imprisonment increased to 13 months to 3 years in aggravated cases;

[17] Section 83A – Criminal Code (Chapter 9 of the Laws of Malta)
[18] Ibid.
[19] Sections 86 and 87 (1)

iv. *illegal arrest, detention or confinement when the offender threatens to kill, to injure or to continue to detain or confine the person arrested, detained or confined with the object of compelling a state, an international governmental organisation or person to do or to abstain from doing an act*[20]: life imprisonment;

v. *theft of nuclear material*[21]: from 7 months to 2 years in the simplest cases but may go up to life imprisonment in aggravated circumstances;

vi. *maliciously causing an explosion of a nature likely to endanger life or to cause serious injury to the property of others*[22]: from 3 to 14 years imprisonment even though no injury to person or property has been caused;

-- the above punishment not in its minimum if serious damage to property is caused[23]

-- life imprisonment if a person dies as a result[24]

-- 4 to 20 years if grievous bodily harm is caused[25]

vii. *making or knowingly being in possession or having under one's control any explosive substance in circumstances giving rise to a reasonable suspicion that the explosive is meant for an unlawful object*[26]: 18 months to 9 years;

viii. *malicious delivery, placing, discharging or detonating a lethal device likely to endanger life or to cause serious injury to property*[27]: from 3 to 14 years imprisonment even though no injury to person or property has been caused;

-- the above punishment not in its minimum if serious damage to property is caused

-- life imprisonment if a person dies as a result

-- 4 to 20 years if grievous bodily harm is caused

-- the above punishments are increased by one degree where the offence takes place in, or is directed at, a public place, a state or government facility, an infrastructural facility, or a public transportation system

ix. *malicious possession or making, use, transfer, alteration, disposal, or dispersal of nuclear material likely to cause death or serious injury to any person or substantial damage to property*[28]: from 3 to 14 years imprisonment even though no injury to person or property has been caused;

-- life imprisonment if a person dies as a result

-- 4 to 20 years if a grievous bodily harm is caused

x. *knowingly keeping, being in possession or having under one's control any nuclear material in circumstances giving rise to a reasonable suspicion that the explosive is meant for an unlawful object*[29]: 18 months to 9 years;

xi. *wilfully setting on fire or otherwise destroying any arsenal, vessel of war, powder magazine, public dock or artillery park*[30]: life imprisonment;

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[20] Section 87 (2)
[21] Section 271 and 281
[22] Section 311
[23] Section 312 (3)
[24] Section 312 (1)
[25] Section 312 (2)
[26] Section 313
[27] Section 314A and 311
[28] Section 314B (1) and 311
[29] Section 314B (3) and 313
[30] Section 315

xii. *wilfully setting on fire any house, warehouse, shop, dwelling house, vessel, dock or any building, shed or other place whatsoever, any person being therein at the time*[31]: life imprisonment;

-- if no one dies, but it could have been foreseen that a person was in the place: from 9 to 12 years
-- otherwise: from 5 to 9 years

xiii. *wilfully setting on fire any house, warehouse, shop, dwelling house, vessel, dock or any building, shed or other place whatsoever, no person being therein at the time, or wilfully setting on fire any combustible substance which could communicate to any other building etc. any person being therein at the time*[32]: life imprisonment where the fire actually communicates as aforesaid reduced to 3 to 9 years, depending on circumstances, if no person dies as a result;
-- from 3 to 5 years if the fire does not communicate

xiv. *wilfully setting on fire any house etc. no person being present and provided the fire could not communicate to a place where a person is present*[33]: 2 to 4 years imprisonment;

xv. *hijacking*[34]: life imprisonment;

xvi. *acts of violence against a person on board an aircraft in flight likely to endanger the safety of the aircraft*[35]: life imprisonment;

xvii. *destruction of an aircraft in service or damage to such aircraft in a manner as to render it incapable of flight or which is likely to endanger its safety in flight*[36]: life imprisonment;

xviii. *placing or causing to be placed on an aircraft in service a device or substance likely to destroy or to cause damage to that aircraft rendering it incapable of flight or likely to endanger its safety in flight*[37]: life imprisonment;

xix. *communicating information known to be false so as to endanger the safety of an aircraft in flight*[38]: life imprisonment;

xx. *by the unlawful and intentional use of any device, substance or weapon performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death, or destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located therein or disrupts the services of the airport*[39]: life imprisonment if such act endangers or is likely to endanger the safety of that airport or to such lesser punishment being not less than three years imprisonment as the Court may deem fit;

xxi. *the unlawful and intentional destruction or damage of air navigation facilities or interference with their operation in such a manner as is likely to endanger the safety of the aircraft in flight*[40]: life imprisonment;

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[31] Section 316
[32] Section 317
[33] Section 318
[34] Section 13 – Civil Aviation (Security) Act (Chapter 353 of the Laws of Malta)
[35] Section 19 (1)(a)
[36] Section 19 (1)(b)
[37] Section 19 (1)(c)
[38] Section 19 (1)(d)
[39] Section 19 (2)
[40] Section 20

xxii. *by means of any device, substance or weapon intentionally to commit at an airport serving civil aviation any act of violence which causes or is likely to cause death or serious personal injury and endangers or is likely to endanger the safe operation of the airport or the safety of persons at the airport*[41]: life imprisonment;

xxiii. *by means of any device, substance or weapon unlawfully and intentionally to destroy or seriously damage property used for the provision of any facilities at an airport serving civil aviation or any aircraft which is at such an airport but not in service, or to disrupt the services of such an airport in such a way as to endanger or is likely to endanger the safe operation of the airport or the safety of persons at the airport*[42]: life imprisonment.

Subparagraph 2 (g):

Please describe in more detail how the procedures for the issuance of identity papers and travel documents help prevent the counterfeiting, forgery or fraudulent use of those documents and what measures exist to prevent their forgery etc.

To conform with international standards and accurately monitor new passport applications and issuance, Malta's Department of Civil Registration has introduced a new passport system. Designed to meet ICAO (International Civil Aviation Organisation) standards, De La Rue's Machine Readable Issuance System operates from the islands of Malta and Gozo with registration and issuance facilities on both islands. Used in conjunction with De La Rue's MIDIS (Multiple Identification Document Issuing System), the passport scheme enables passport applications and data from the passport offices to be processed and produced at either sites. Applicant details are centrally stored on the system's central database for future issuance purposes.

Specifically designed to allow a smooth and convenient passage through international passport controls, the new passport features personal data and machine readable code, which is tested for durability and security before issuance. To prevent fraudulent activity, the passport is also protected with a range of security features including Ultra Violet, a watermark and security printing and other covert features.

To further enhance the security features of the Malta passport, the MIDIS system has been upgraded and it now allows the passport photo to be digitally captured and printed along with security features on the passport, thus eliminating even more the possibility of fraud. The MLIS System transfers full colour text and digital images from a pre-printed transfer paper onto the data page of the passport. This system works closely with ICAO to set world wide immigration standards and the finished personalised passport produced by MLIS is compliant with their standards for the Machine Readable Zone (MRZ) and the Visual Zone (VIZ). The passport personalization details are integrated with MLIS' advanced security features, which operate at three different levels:

Level 1 provides overt features. These include a pearlescence or optically variable inks (OVI) which change colours at different angles.

Level 2 provides 'official assist' features. These include photochromic inks visible under UV light or UV visible fluorescence. These require some form of simple viewing aid, normally a UV lamp.

Level 3 provides covert features. For these features, viewing equipment specially developed by De La Rue and which is not available commercially is required. This equipment can be used to check virtually unbreakable security features.

Application for a passport is always submitted on a pre-printed form which requests personal information on the applicant. Applicant is always asked to produce the National Identity Card when applying and collecting the Passport. Details of previous passports, if any, are also checked against previous records. All applications are

[41] Section 8 (1) – Airports and Civil Aviation (Security) Act (Chapter 405 of the Laws of Malta)
[42] Section 8 (2)

checked for inaccuracies in personal details against a data bank which holds details of Maltese citizens. Additionally, applications are checked against a computer-stored stop list consisting of persons holding other citizenships or having court warrants against them.
Passports remain the property of the Governmnet which may at any time invalidate, withdraw or cancel them. The holder of a passport issued in Malta does not entitle the holder to re-enter Malta.

As regards identity cards, the law provides that an identity card must be made of such material and in such manner as to provide adequate security against forgery, tampering or alteration and must include an area where machine readable coded information may be inserted.

Could Malta please provide the CTC with information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls preventing the movement of terrorists?

In Malta the Immigration Service is the responsibility of the Police Force. The Principal Immigration Officer is the Commissioner of Police. Malta has one National Police Force. In view of the above, inter-agency co-operation between the Police and Customs Drug Squad, the Economic Crimes Units and the Security Branch (under which the Immigration Department falls) is very rapid. Any assistance required from the officers at border control, in particular regarding entry of persons on the stop list suspected to be terrorists with a view to arrest, extradition, surveillance, searches etc. is easily extended to all the specialised units who are in one way or another involved in this field of operation.

Subparagraph 3 (b) and (c):

Please provide a list of the agreements on mutual legal assistance and extradition which Malta has entered into.

Malta does not require a bilateral agreement on mutual legal assistance to be able to provide such assistance to other states, and at least since independence in 1964, Malta is able to extend and has extended legal assitance to states without any such agreement on the basis of reciprocity. Malta is a party to the European Convention on Mutual Assistance in Criminal Matters. This notwithstanding, a number of bilateral agreements relating to co-operation in the fight against drugs and organized crime have been concluded between Malta and a number of other States, as follows:

Bilateral Agreements signed between Malta and other States concerning the Fight Against Drugs and Organized Crime

Country	Signed	Entry into force
Albania	19 February 2002	19 February 2002
China	22 October 2001	22 October 2001
Cyprus	16 September 1999	18 March 2000
Egypt	23 February 1997	22 March 1998
France	9 March 1998	1 July 1998
Greece	Co-operation between the Ministry of Home Affairs of Malta and the Ministry of Public Order of the Hellenic Rep. On matters of their competence. 24 May 2001	Awaiting ratification

Hungary	18 May 2000	18 December 2000
Israel	28 May 1999	1 August 2000
Italy	28 February 1991 Amendments through Exchange of Notes signed on 22 August 1996 and on 3 September 1996	28 February 1991 3 September 1996
Libya	26 April 1995	29 August 1996
Russia	21 April 1993	21 April 1993
Slovakia	16 May 2001	16 May 2001
Spain	28 May 1998	27 November 1998
Sweden	10 May 2001	10 May 2 001
Tunisia	6 April 2001	6 April 2001
Turkey	29 November 1999	28 February 2000

Extradition Agreements

Malta succeeded to the Extradition Treaties signed by Great Britain and extended to Malta prior to 1964 (the year when Malta became independent). Among these (apart from those with European countries which have been superseded since Malta's ratification of the European Convention on Extradition) there are treaties with the U.S.A., Panama, Ecuador, Guatemala, Liberia, Nicaragua, Paraguay, Peru, San Marino, Thailand, Uruguay, Tunis, Chile, Argentina, Liberia, Mexico, and Cuba. Any changes effected in these treaties after 1964 do not bind Malta. Similarly, Malta is not bound by any extradition treaties signed by Britain after 1964.

On 19 March 1996, Malta signed and ratified the European Convention on Extradition (1957) – a multilateral Convention which governs extradition between the Contracting Parties thereto. This Convention entered into force for Malta on the 17th June 1996. According to Article 28 of the Convention (Relations between this Convention and bilateral Agreements), the provisions of the European Convention on Extradition supersede and take precedence over the provisions of any bilateral extradition treaties, conventions or agreements which were previously concluded between any two Contracting Parties to this Convention.

The European Convention on Extradition is open for signature to the member States of the Council of Europe, as well as accession by non-member States. To date there have been 42 ratifications/accessions[43]. Extradition between Malta and States Parties to the European Convention on Extradition is governed by the provisions of the said Convention.

Malta also signed and ratified the Additional Protocol and the Second Additional Protocol to the European Convention on Extradition on 20th November 2000.

[43] For a complete chart of States that have signed/ratified the European Convention on Extradition, kindly consult the following URL http://conventions.coe.int/treaty/EN/cadreprincipal.htm

Sub-paragraph 3 (d)

Please provide a progress report on the ratification of the Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980.

Article 5 of this Convention stipulates the need for the establishment of a central authority and point of contact for physical protection of nuclear material. To date Malta does not have a formal central authority dealing with these issues. At present, issues in this field fall within the remit of the Radiation Protection Committee. However, legislation is currently in the pipeline to formally establish the Radiation Protection Board as the central authority required under the Convention. This is expected to be in place within the next two months. Once established this Board will be nominated as the Central authority in the area and Malta will be able to accede to the Convention.

Preliminary work on the implementation of the Articles of this Convention, especially those dealing with transport (Article 3 and 4) is being carried out by the ad hoc Committee. Meetings and memoranda of understanding with the Authorities involved in transport in Malta have already taken place and mechanisms for the effective implementation of this Convention sought. By Act III of 2002 amendments were made to the Criminal Code to criminalise the conduct referred to in Article 7 of the Convention on the Physical Protection of Nuclear Material and which establishes jurisdiction over the said offences as provided in Article 8 of the same Convention.

Subparagraph 3 (e):

Have the crimes set forth in the relevant international instruments relating to terrorism been included as extraditable offences in the bilateral treaties to which Malta is a party?

Most of the offences set forth in the relevant international instruments relating to terrorism are already extraditable under the multilateral and bilateral treaties applicable to Malta or to which Malta is a party and all acts which could amount to acts of terrorism have been deemed by law to be included in extradition treaties made by Malta or applicable to Malta with contracting parties to the the Suppression of Terrorism Convention, the Internationally Protected Persons Convention and the Taking of Hostages Convention.

Will the amendment of Maltese law mentioned in relation to sub-paragraph 3 (e) also include an amendment of Article 43 of the Maltese Constitution, under which, in general, no person shall be extradited for an offence of a political character?

Act I of 2001 amended the Interpretation Act (Chapter 249 of the Laws of Malta) by the addition, *inter alia*, of the following provision:

Section 3 (4)(c): *The terms "crimes against humanity", "crimes against international law" and "political offence" shall have the same meaning assigned to them under customary international law in general and in international instruments to which Malta may be a party in particular.*

The amendment which has been made to the Interpretation Act concerning political offences does not include an amendment to the Maltese Constitution since the amendment to the Interpretation Act is considered sufficient for the purpose.

Please outline the legislation implementing those of the relevant conventions which Malta has already ratified.

To date Malta has enacted legislation to implement a number of the relevant international conventions and protocols relating to terrorism which have already been ratified by Malta, as follows:

1973 New York Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents	Implemented by Act XVII of 1996
International Convention Against the Taking of Hostages	Implemented by Act XVII of 1996
International Convention for the Suppression of Terrorist Bombings	Implemented partially by Act III of 2002
International Convention for the Suppression of The Financing of Terrorism	Implemented partially by Act III of 2002
European Convention on the Suppression of Terrorism	Implemented by Act XVI of 1996

Sub-paragraph 3 (g):

Please clarify whether Malta's reservation to the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, continues to be valid vis-à-vis the States Parties to the European Convention on the Suppression of Terrorism and explain whether it reflects Malta's practice with regard to other States.

Malta's reservation to the relevant Convention is still valid. In so far as it reflects the requirements of the provisions of the Constitution of Malta it reflects the legal position with respect to all States. However, as a result of the amendments which have been made to the Maltese Interpretation Act[44], the Maltese Constitutional Court should find that an offence under the Convention in question, or under any other international instrument precluding relevant offences from being considered political offences, is not a political offence.

Paragraph 4

Has Malta addressed any of the concerns expressed in paragraph 4 of the resolution?

On the national level Malta has legislation catering for the different areas mentioned in paragraph 4 of the resolution, including legislation in connection with money-laundering (Prevention of Money Laundering Act – Chapter 373 of the Laws of Malta and subsidiary legislation and rules issued thereunder), and the establishment of a regime for the control of exports of dual-use items and military equipment. As regards the latter, the Dual-Use Items (Export Control) Regulations 2001 and the Military Equipment (Export Control) Regulations 2001 have entered into force as from 1st January 2002. Inter-agency co-operation, particularly between the financial supervisory authorities, the Customs administration and specific units in the Malta Police Force is continuous.

As regards regional and international co-operation in the fight against international terrorism and transnational organized crime, Malta has concluded a number of bilateral agreements with other States relating to co-operation in the fight against drugs and organized crime[45]. Assistance to other States in criminal or judicial matters on a bilateral or reciprocity basis, or through Interpol channels is also extended whenever requested.

Sharing of intelligence between the Malta Security Forces and other foreign services on a bilateral or multilateral basis is continuous, and all measures necessary to intensify such co-operation are being taken. Malta is also

[44] *Vide* reply to sub-paragraph 3 (e)
[45] *Vide* reply to sub-paragraphs 3 (b) and (c)

participating in and contributing to regional and international customs information networks through information sharing whenever information which may in any way be related to terrorist activity becomes available to the Maltese Customs Administration. In this regard, any such information is transmitted through the Customs Enforcement Network of the World Customs Organisation.

On 14th December 2000 Malta signed the United Nations Convention on Transnational Organised Crime as adopted by the United Nations at its 55th session of the General Assembly on 15 November 2000. Malta will shortly be acceding to Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 once the necessary legal procedures required prior to accession are completed.

Malta has stated its belief that addressing the disruptive phenomenon of small arms proliferation becomes more urgent when compounded by its complex linkages with other equally destabilising activities such as international crime, drug trafficking and terrorism. In line with its belief, Malta has participated in the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York in July 2001, and welcomed the Programme of Action adopted during this Conference. It is augured that all Member States implement the recommendations contained in the Programme of Action in a collective effort to combat this threat to international peace and security.

Malta's adherence to its international obligations and its willingness to co-operate with other countries to combat proliferation is further evidenced by the signature and ratification of a number of disarmament conventions and Protocols including: the Treaty on the Non-Proliferation of Nuclear Weapons, the Biological Weapons Convention, the Convention on Certain Conventional Weapons including its three Protocols, and the Chemical Weapons Convention, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction and the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

Other Matters

Could Malta please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution?

Inter-agency co-operation exists between a number of institutions, particularly between the financial supervisory authorities and specific units in the Malta Police Force, in order to effectively implement the laws and regulations which are seen as contributing to compliance with resolution 1373 (2001). Three institutions to be considered from the preventive and regulatory aspect would be:

- Any of the following financial supervisory authorities who in the course of their duties, encounter any suspicion of money laundering activities are obliged to report that information to a Police officer not below the rank of Inspector.

i. The Central Bank of Malta (CBM);
ii. The Malta Financial Services Centre (MFSC);
iii. The Competent Authority appointed to regulate and supervise relevant financial business as detailed above;
iv. The Registrar of Companies;
v. Banking, Investment services and insurance business supervisors;
vi. An Auditor appointed by a person carrying on relevant financial business;
vii. The Malta Stock Exchange (MSE);
viii. The Gaming Board appointed under the Gaming Act Regulations
ix. An inspector appointed under the Gaming Act.

- Internal co-operation between the different units within the Malta Police Force: in Malta the Immigration Service is the responsibility of the Police Force. The Principal Immigration Officer is the Commissioner of Police. Malta has one National Police Force. In view of the above, inter-agency co-operation between the Police and Customs Drug Squad, the Economic Crimes Units and the Security Branch (under which the Immigration Department falls) is very rapid[46].

- The *Malta Financial Services Centre* established by the Malta Financial Services Act, being a body corporate with distinct legal personality responsible for the regulation and supervision of the financial sector and acting as the Companies Registrar. The MFSC reports to Parliament through the Minister of Finance[47].

- The *Financial Intelligence Analysis Unit* (FIAU) was established by Act XXXI of 2001 which amended the Prevention of Money Laundering Act, 1994. The provisions establishing the FIAU came into force on the 1st March, 2002 and the governing board was appointed by the Minister of Finance with effect from the same date. The FIAU is a government agency having a distinct legal personality reporting to the Minister of Finance and is responsible for the collection, collation, processing and analysis and dissemination of information with a view to combating money laundering. The FIAU is required by law to forward any information on suspicions of money laundering to the Malta Police Force for investigation.

  The FIAU has not yet started to receive suspicious transaction reports, which are currently made to the police, and will commence to do so when the necessary staff to analyse such reports has been recruited. Nevertheless the FIAU, through its board, has already had occasion to co-operate with two foreign Financial Intelligence Units.

- The *Malta Stock Exchange* established by the Malta Stock Exchange Act, 1990, being a body corporate with distinct legal personality reporting to the Minister of Finance and responsible for licensing and regulation of stockbrokers and company listing.

[46] *Vide* Annex VIII for the organisational chart of the Malta Police Force.

[47] *Vide* Annex IX for the organisational charts of the Malta Financial Services Centre; the Registrar of Companies and the Banking Unit.

Table of Annexes attached to the Report

Annex I: Prevention of Money Laundering Regulations, 1994

Annex II: EU Directive 2001/97

Annex III: EEC Directive 91/308

Annex IV: Appendix II – Guidance Notes for Credit and Financial Institutions

Annex V: Appendix II – Guidance Notes for Investment Services and Life Assurance Businesses

Annex VI: Appendix II – Guidance Notes for Offshore Banking Licence Holders

Annex VII: Schedule 2 of the Prevention of Money Laundering Act

Annex VIII: Organisational Chart of the Malta Police Force

Annex IX: Organisational Charts of:

a. the Malta Financial Services Centre
b. the Registrar of Companies
c. the Banking Unit